

# Town Council Meeting: 13 October 2008



Town of Garrett Park  
PO Box 84  
4600 Waverly Avenue  
Garrett Park, MD 20896

Regular Meeting of Town Council  
Garrett Park Town Hall  
10814 Kenilworth Avenue  
Garrett Park, MD 20896

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**Meeting Call to Order:** Mayor Keller called the meeting to order at 8:10 PM. Present were Councilmembers Berry, Hansen, Irons, Mandel, and Wegner. Also present was Clerk *pro tem* Shirin Keyani, Richard Folkers of the *Bugle*, Jennifer Beasley of the *Gazette*, Historic Preservation Committee Chair Nancy Schwartz, Setback Advisory Committee Chair Harry Gordon, demolition permit applicant Don Reed, and Tara Flynn of the Garrett Park Cooperative Nursery School. In attendance were Town residents Peter Benjamin, Peter Cohen, Phil Schulp, Ray McKenzie, Michael Colella, Loretta Bonner, Peter Kratz, Jeff Dobosz, Natalie Shelton, Gerilee Bennett, Carolyn Shawaker, Ed Shawaker, Chris Strong, Bruce Artim, Allison Pierce, George Martin, Mike Grieb, Kay Hager, and a number of other residents.

**Approval of Agenda:** Without objection, the agenda was revised to delete consideration of introduction an Ordinance to Amend Chapter 4 of the Garrett Park Town Code to Increase the Maximum Allowable Lot Coverage from 18 to 20 Percent in Certain Circumstances for an Open Porch; deletion of the transfer of \$50,000 from Capital Contingency; and deletion of consideration of the minutes of the 01/23, 08/07, and 09/08 meetings.

## **Public Hearings:**

- Public Hearing: Ordinance 2008-05: An Ordinance To Amend Chapter 4 of the Garrett Park Town Code to Delete the Combined Setback Requirement and to Add a Lot Coverage Requirement – Mayor Keller called the hearing to order at 8:20 PM and a number of residents spoke. Mayor Keller then noted that the hearing was being held so that the Council could hear the views of residents, and that any action to retain or delete elements of the introduced ordinance would be acted upon later in the meeting. The Mayor further noted that the Ordinance 2008-05 was introduced at the 07 August Council meeting and had three elements: the deletion of the 82% minimum combined setback, the substitution of an 18% lot occupancy limit, and the specific inclusion of various elements used to calculate lot occupancy, sometimes referred to as the “laundry list.” Mayor Keller stated that the addition of this “laundry list” had complicated matters, and that Councilmember Mandel and others proposed to delete it by amending the introduced ordinance when it came on for consideration for adoption later

in the meeting. There was more discussion with residents regarding the possible amendment of the introduced ordinance.

- Demolition Hearing: 11204 Kenilworth Ave., House Damaged by Fire and Garage – Mayor Keller called the hearing to order and turned the chair over to Councilmember Irons, who asked Historic Preservation Committee Chair Nancy Schwartz to present the Committee’s report on the house at 11204 Kenilworth Avenue (the report is “attachment 1” to these minutes). Mrs. Schwartz noted that the application met the legal requirements for a demolition permit in that the applicant had filed to re-plat the property into a single lot, but that the Committee wanted to encourage consideration of restoration of the original Victorian, as only three 19th-Century homes in Garrett Park had been lost. Mr. Reed stated that he was willing to work with the Committee and explore options for keeping as much of the original structure as possible, but that 75% of it had been consumed or damaged by the fire. Mrs. Schwartz noted the deconstruction of the remaining structure was also an option so that original elements would not be completely lost, but could be reused elsewhere if not included in a reconstruction on the site. Mayor Keller noted that the applicant was proceeding in good faith to explore all options and thanked him for doing that.

Councilmember Irons **MOVED**

That the Council approve the demolition permit application for 11204 Kenilworth Avenue with the condition that the applicant file a signed copy of the re-plated lot with the Town Office prior to commencing the actual demolition of the structure. Councilmember Wegner seconded the motion, which **PASSED** unanimously.

### **Presentations by Residents**

Tara Flynn of the Garrett Park Cooperative Nursery School (GPCNS) spoke to the Council and residents present regarding efforts to save the Garrett Park Community Center - home of GPCNS for over 50 years - noting that the future of the building is still not secure. Ms. Flynn reported that the GPCNS has submitted a proposal to Town of Garrett Park that seeks transfer of ownership of the building from Montgomery County to the Town. Ms. Flynn stated that the GPCNS would seek a long-term, no-rent lease from the Town, and would assume financial responsibility for needed repairs, with the Town providing routine exterior and landscape maintenance services; GPCNS would operate the facility, which would support educational, recreational, and social activities. Ms. Flynn reported that Montgomery County estimates that needed repairs would cost between \$150,000 and \$200,000, and that the GPCNS plans fundraising, including grants and donations, that would complete repairs and secure the school’s home. Ms. Flynn asked the Council, on behalf of the GPCNS, that Garrett Park pursue obtaining the building, noting that it

has been used by Town residents non-stop since the Garrett Park Women's Club started the effort to obtain and install the building in the 1940s.

Councilmember Wegner noted that the Town is in discussions with Park and Planning and that a meeting had been set up for November 4th with the County Parks Department to review options and to get more detailed information. Councilmember Mandel asked about the GPCNS fundraising timetable. Ms. Flynn told the Council that the GPCNS had already put aside \$5,000, that the Parks Department had put \$30,000 to \$50,000 into the building this past summer, and that 2010 was the GPCNS target for reaching their goal. There was extended discussion as to whether or not the GPCNS could extend its operations to a full day. Mayor Keller asked what the Town could do to facilitate the school's efforts and there was further discussion regarding the possible Town taking ownership of the building. Mayor Keller noted that it was unclear if the Charter gave the Town the authority to own property outside of the Town boundary.

### **Mayor's Report:**

- Mayor Keller thanked the Citizens Association for using their September meeting to provide a forum for the Montgomery County Police to discuss recent crime in Town, and for residents to discuss Ordinance 2008-05 and zoning issues.
- The Mayor noted continued concern regarding crime in the Town and surrounding area, that he would continue to maintain close contact with the Montgomery County Police, and that residents should take prudent precautions and always notify police if they had any concerns.
- Mayor Keller reported that Councilmember Irons would attend the Maryland Municipal League's (MML) Fall Conference, which will focus on MML's 2009 legislative priorities: protecting municipal revenues, expanding photo radar speed limit enforcement, and homeowner loans for energy efficiency upgrades to be offered by the Maryland Department of Energy.
- Mayor Keller also noted that he and the Council would be working on setting up the Land Use Task Force to begin work on reviewing the Town's zoning ordinances.

### **Councilmember's Reports on Areas of Responsibility:**

- Councilmember Wegner reported that the road rehabilitation program for FY08 & FY09 was almost complete, and that there were only three items left to deal with on Strathmore Avenue.
- Councilmember Hansen reported that long-time Arboretum Committee member and supporter Els Benjamin was semi-retiring but would continue to volunteer her help on the committee as a "citizen volunteer." She also noted that the fall pruning had started, and that on Sunday, November 2<sup>nd</sup>, Phil Normandy would conduct the annual Tree Walk through Town. Weed Warrior Day will be held on April 29<sup>th</sup>, rain or shine, and the next Arboretum Committee meeting will be held on February 2<sup>nd</sup>.

- Councilmember Mandel reported that he had been working with Administrator Pratt to replace carpeting in the Town Hall, but that it will not be completed in time for election night when the Film Society will have the election returns on the big screen - everybody is welcome.
- Councilmember Irons reported that the Historic Preservation Committee is developing displays of historic views of Garrett Park for the Post Office lobby and will be announcing a date for an historic architecture walk through Town.
- Councilmember Irons also reported that the Setback Advisory Committee (SAC) had been working on the issue of prior non-conforming homes, lot coverage, and open front porches and asked SAC Chair Harry Gordon to update the Council. Mr. Gordon reported that the committee had focused on the issue of front porches. Noting that the current code already views them as a desirable asset to the Town and makes provision for front setback relief in Section 402, Mr. Gordon told the Council that the SAC sees as consistent with this policy a provision to allow main buildings with front porches to go up to 20% of lot coverage under certain circumstances.

**Approval of Minutes:** Councilmember Irons **MOVED**

That the minutes of the 14 July 2008 Regular Council Meeting be approved as distributed. The motion was seconded by Councilmember Wegner and **PASSED** unanimously.

**Action/Discussion:**

- Adoption of Ordinance 2008-05: An Ordinance To Amend Chapter 4 of the Garrett Park Town Code to Delete the Combined Setback Requirement and to Add a Lot Coverage Requirement:

Councilmember Irons **MOVED**

That Ordinance 2008-05, introduced at the 07 August 2008 Council meeting be adopted. Councilmember Wegner seconded the motion and Mayor Keller called for discussion.

Councilmember Mandel **MOVED**

That SECTION 1 of Ordinance 2008-05, referring to Section 402 of the Garrett Park Code of Ordinances, be amended by deleting Section 402(2)(b)(3), as written, in its entirety and replacing it with a new Section 402(2)(b)(3) that reads:

(3)-Maximum lot coverage. The maximum percentage of the net lot area that may be covered by a main building is (18) per cent.

Councilmember Wegner seconded the motion to amend and Councilmember Mandel stated that this was the amendment that was referenced in the Sense of the Council vote taken at the last Council meeting. Resident Cindy Kratz asked why not raise the lot coverage to 20% and Councilmember Mandel stated that he was satisfied with 18%. Resident Kay Hager said that the Town would be right back to where it had

started. Councilmember Irons confirmed that there would be no practical change in how lot coverage was calculated under the new ordinance. There was further discussion. Mayor Keller called for the vote and the motion to amend Ordinance 2008-05 **PASSED** unanimously.

Councilmember Mandel **MOVED**

That Ordinance 2008-05 be further amended by deleting the existing paragraphs (1) and (2) of SECTION 3 in their entirety, and replacing them with new paragraphs (1) and (2) to read:

(1) The provisions of this ordinance are interrelated and the Council would not adopt any part of this ordinance without all other parts of this ordinance. Accordingly, if any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, or is rejected in a referendum, this entire ordinance shall be deemed void and the Garrett Park Code shall not be amended in any respect by this ordinance. By way of example, if the lot coverage provisions are not effective, the repeal of the minimum combined setback provision shall not be effective; and

(2) This ordinance shall take effect on the 3<sup>rd</sup> day of November 2008, or if a valid petition for a referendum as to this ordinance or any part hereof is filed pursuant to Section 78-15 of the Garrett Park Charter, this ordinance shall take effect upon approval of this ordinance, without any deletions, by the voters of Garrett Park.

Councilmember Wegner seconded the motion. Councilmember Berry noted that he was disappointed that these two paragraphs were not available to citizens before the Council meeting or during the public hearing so that only those residents that remained for the entire meeting were seeing this information for the first time. After discussion Mayor Keller called for the vote and the second motion to amend **PASSED** unanimously.

Mayor Keller then called for the vote on the motion to adopt Ordinance 2008-05, amended as detailed above, and the motion **PASSED** unanimously. (A copy of the adopted ordinance is attached to these minutes)

- Adoption of Ordinance 2008-06: FY 2009 Budget: Transfer of \$16,750 from projected surplus to Line Item 11700-Professional Fees -

Councilmember Wegner **MOVED**

That \$16,750 be transferred from the projected surplus to Line Item 11700-Professional Fees; Councilmember Irons seconded the motion, and the motion **PASSED** unanimously.

- Transfer of \$50,000 from Capital Contingency, Line Item # 23900 to

Professional Fees, Line Item #11700 – Mayor Keller noted that this item had also been deferred to a future meeting.

**Adjournment:** The meeting adjourned at 10:50 PM.

Respectfully submitted

[TOWN SEAL]

*Shirin Keyani*

Shirin Keyani, Clerk *pro tem*

### **Report of the Historic Preservation Committee on the Demolition Permit Request for 11204 Kenilworth Avenue**

A demolition permit has been applied for by the current owners of 11204 Kenilworth Avenue. The house, which was heavily damaged by fire, is one of the Town's original Victorian residences. It was built sometime between 1890 and 1892. The first owner is listed as Barbara Israel. The Israel family owned the house until 1920. From the late 1930s through 1975, the house was the home of the Dudley Hill Family. Mr. Hill was a Town Council Member and a well-known Town character and volunteer. Mrs. Hill was noted for the perfect penmanship with which she created ceremonial documents.

The house straddles lots 42 and 43, and until 1978, the property included the two lots on either side. Stylistically, the house is related to simpler versions of Garrett Park's Victorian houses (like 10706 and 10807 Kenilworth) where decorative details were largely confined to the porches. Old photographs show the original Victorian porch across the first floor of the house. The Hills replaced the porch with the semi-circular portico that is now on the house. A garage was added at the rear of the house in the 1970s.

The committee considered this demolition request with great regret. To date, only three of the original Victorian houses built in Garrett Park have been lost. All were lost to fire. Two burned in 1903 and were replaced in 1908 and 1910 by the houses at 10922 and 10926 Montrose Avenue. Another burned in the early 1920s and was replaced by the Sears kit house at 11002 Kenilworth Avenue in 1924. Another house, at 11018 Kenilworth suffered fire damage in the 1990s, but was salvageable and was carefully restored by the current owners. Given the importance of the original Victorian houses to the character of Garrett Park, and given the remarkable record of preservation we have enjoyed, the committee hopes that, before the house is demolished, every effort will be made to examine the possibility of salvaging it.

No one on the committee has been inside the house, nor do we have any information on its condition. We are fully aware that it may not be physically or economically possible to restore the building. Our co-chairman, Nancy Schwartz, was contacted by the present owner, Don Reed, who plans to live on the property with his family. Mr. Reed expressed a willingness to have a structural engineer look at the house to determine its soundness and to speak with the owners of 11018 Kenilworth about the process of restoring a house with fire damage. Given the historic importance of this house, the committee is extremely grateful to the owner for offering to consider these steps. In the event of demolition, Mr. Reed also indicated that he has been in touch with a demolition firm that "deconstructs" (rather than bulldozes) buildings to determine if there are reusable materials that can be salvaged. He has also

employed a top-quality architect and is approaching the design of a replacement house in a thoughtful way.

There is no legal impediment to demolishing this house. It does not have Montgomery County historical designation. The lots on which it sits have been re-platted and only one house is planned for the site. We hope that the Council will share our regret at losing one of the Town's Victorian houses and will encourage the owner to explore the possibilities and benefits of restoration, at least of the shell of the house, before he makes the decision to demolish.

Our impression is that the owner is very willing to proceed thoughtfully in this matter.



**Ordinance No.: 2008-05**

Introduced: August 7, 2008

Montgomery County Notice: August 8, 2008

Public Hearing: September 8, 2008

Montgomery County Notice: September 11, 2008

Public Hearing: October 13, 2008

Amended & Adopted: October 13, 2008

Effective Date: November 3, 2008

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, grants to the legislative body of every incorporated municipality in Maryland, including the Town of Garrett Park, general power to pass such ordinances not contrary to the Constitution of Maryland or public general law as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Section 78-17 of the Charter of the Town of Garrett Park authorizes the Town Council to pass ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town and for such other police or health matters as it may deem necessary; and

WHEREAS, Section 78-17(55) of the Charter of the Town of Garrett Park empowers the council to regulate or restrict size of buildings and other structures, the percentage of lot occupancy, the size of yards, courts and other open spaces, location of buildings, structures, and land for residence or other purposes; and

WHEREAS, in 1992 the Maryland General Assembly enacted Chapter 573 of the 1992 Laws of Maryland, codified at Article 28, Section 8-115.1 of the Maryland Code, to authorize the legislative body of a municipal corporation within Montgomery County, such as the Town of Garrett Park, to regulate the construction, repair, erection or remodeling of single family residential houses, buildings or other structures on land zoned for single family residential use, as it relates to, among other things, the location of structures on a property, including setback requirements, and to ratify building requirements imposed before October 1, 1992; and

WHEREAS, on July 20, 1992, the Town Council adopted Ordinance Number 92-2 which added Section 402(b)(3) to the Town Code and established a minimum combined setback requirement pursuant to the Town Council's authority to impose building requirements, including the regulation of building setbacks; and

WHEREAS, in 2006, Article 28, Section 8-115.1 of the Maryland Code was amended to grant to municipal corporations in Montgomery County, such as the Town of Garrett Park, the authority to regulate, among other elements, the dimensions of structures, including height, bulk, massing and design, and lot coverage, including impervious surfaces; and

WHEREAS, the Town Council finds that the amendment of Section 402(b)(3) of the Town Code will provide clarity and certainty regarding the requirements for construction of buildings within the Town; and

WHEREAS, to comply with Article 28, Section 8-115.1 of the Maryland Code, on the 8th day of August, 2008, a copy of the following Ordinance was submitted to the Montgomery County Council for its comments; and

WHEREAS, no comments were received from the Montgomery County Council; and

WHEREAS, after proper notice to the public, and after at least thirty days from the date a copy of the following Ordinance was transmitted to the Montgomery County Council, the Town Council, in public session assembled on the 8th day of September, 2008, conducted a public hearing at which it considered the following Ordinance; and

WHEREAS, on September 8, 2008, as a result of public comments, the Council decided to defer consideration of the Ordinance and to consider both the original version and an alternate version at its October 13, 2008 meeting; and

WHEREAS, to comply with Article 28, Section 8-115.1 of the Maryland Code, on September 11, 2008, copies of both the original version and the revised version, as set forth herein, of the following Ordinance were submitted to the Montgomery Council for its comments, and

WHEREAS, no comments were received from the Montgomery County Council; and

WHEREAS, after proper notice to the public, and after at least thirty days from the date a copy of the original and revised versions of the Ordinance were transmitted to the Montgomery County Council, the Town Council, in public session assembled on the 13th day of October, 2008, conducted a public hearing at which it considered both versions of the following Ordinance; and

WHEREAS, the Town Council finds that amendment of Section 402(b)(3) of the Garrett Park Town Code and of related provisions in Chapter 4 of the Town Code as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town.

NOW, THEREFORE, the Town Council of the Town of Garrett Park does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 4 OF THE GARRETT PARK  
TOWN CODE TO DELETE THE COMBINED SETBACK REQUIREMENT  
AND TO ADD A LOT COVERAGE REQUIREMENT.

SECTION 1. BE IT ORDAINED AND ORDERED, this 13<sup>th</sup> day of October, 2008, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Article 23A of the Maryland Code, Article 28, Section 8-115.1 of the Maryland Code, and the Town Charter, that Section 402 of Chapter 4 of the Town Code is hereby amended to read as follows:

Section 402. Building Setback Lines **and Lot Coverage**

(a) Purpose.

(1) To protect the public health, safety and welfare of the Citizens of Garrett Park and, more specifically, to preserve and protect the lands and improvements within the Town by ensuring that all proposed new construction and alterations to buildings in the Town be compatible with the Town's existing scale, natural topography, vegetation, trees, physical setting, and density of development.

(2) To establish stricter or additional building location, ~~or~~ setback **and lot coverage** requirements than those of the current Montgomery County Zoning Ordinance for the construction, repair, erection, or remodeling of houses, buildings, or other structures on land zoned for single-family residential use.

(3) To provide a procedure for a variance from the strict application of the building requirements contained in this section.

(b) Setback **and Lot Coverage** Requirements. All buildings on land zoned for single-family residential use hereafter erected or altered shall adhere (except as provided in Section 403(d)) to the setback **and lot**

**coverage** requirements of the Montgomery County Zoning Ordinance and definitions in effect at the time of the application for a building permit, and to the additional setback **and lot coverage requirements** set forth below:

\* \* \*

**(3) Minimum combined setback. The total of the combined setback areas for main buildings, being the sum of front, rear, and side yards, shall not be less than eighty-two (82) per cent of the entire lot area. Maximum lot coverage. The maximum percentage of the net lot area that may be covered by a main building is eighteen (18) per cent.**

(4) Adjustments of setback **and lot coverage** requirements.

(4.1) Where applicable, either of the following adjustments may be made in the required setback:

(4.1.1) If the total side setback requirement is more than twenty-five (25) feet for lots with over sixty (60) feet in width at the main front building line or twenty (20) feet for lots with sixty (60) feet or less in width at the main front building line, it may be reduced to not less than twenty-five (25) feet for lots with over sixty (60) feet in width at the main front building line or twenty (20) feet for lots with sixty (60) feet or less in width at the main front building line provided the resulting reduction in side yard areas is offset by an equivalent increase in the square footage of the rear and/or the front yard areas.

(4.1.2) If the rear setback requirement is more than twenty-five (25) feet for lots with over ninety (90) feet in depth or more than fifteen (15) feet for lots with ninety (90) feet or less in depth, it may be reduced to not less than twenty-five (25) feet for lots with over ninety (90) feet in depth or fifteen (15) feet for lots with ninety (90) feet or less in depth provided the resulting reduction in rear yard area is offset by an equivalent increase in the square footage of the side and/or the front yard areas.

(4.2) Building setback lines **and lot coverage requirements** shall be subject to adjustment under

Section 403 (Variances) of this Code of Ordinances to the extent necessary to assure that a reasonable net lot area is available for the construction of any additions to main and accessory buildings.

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this 13<sup>th</sup> day of October, 2008, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Articles 23A and 28 of the Maryland Code and the Town Charter, that Section 403(c)(1)(1.1) of Chapter 4 of the Town Code is hereby amended to read as follows:

Section 403. Variances

\* \* \*

(c) Conditions upon which relief may be predicated

(1) No variance shall be granted unless the Council finds, on the basis of the evidence of record that good cause has been shown on the following grounds for relief from the strict application of the building requirements.

(1.1) Because of the unusual dimensions, shape, topography or other exceptional characteristics of the lot, the lot cannot accommodate the building sought to be erected if the setback **or lot coverage** requirements of Section 402 are strictly applied to the construction and the strict and literal application of Section 402 to the lot would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship on, the owner of the property.

SECTION 3. AND BE IT FURTHER ORDAINED AND ORDERED, this 13<sup>th</sup> day of October, 2008, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Articles 23A and 28 of the Maryland Code and the Town Charter, that:

(1) The provisions of this ordinance are interrelated and the Council would not adopt any part of this ordinance without all other parts of this ordinance. Accordingly, if any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, or is rejected in a referendum, this entire ordinance shall be deemed void and the Garrett Park Code shall not be amended in any respect by this ordinance. By way of example, if the lot coverage provisions are not effective, the repeal of the minimum combined setback provision shall not be effective; and

(2) This ordinance shall take effect on the 3<sup>rd</sup> day of November 2008, or if a valid petition for a referendum as to this ordinance or any part hereof is filed pursuant to Section 78-15 of the Garrett Park Charter, this ordinance shall take effect upon approval of this ordinance, without any deletions, by the voters of Garrett Park.

ATTEST:

TOWN OF GARRETT PARK

*Edwin Pratt, Jr.*

*Christopher Keller*

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Edwin Pratt, Jr., Clerk-Treasurer  
Town of Garrett Park

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Christopher Keller, Mayor  
Town of Garrett Park

**Bold and Underline** indicates new material

**~~Bold and Strikethrough~~** indicates material deleted

\* \* \* Indicates material unchanged